

Running Head: OFF-DUTY FIREFIGHTER DWI

Examining Driving While Intoxicated by Off-Duty Firefighters

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## Certification Statement

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## Abstract

The Santa Fe County Fire Department needs to develop an effective written policy to address volunteer and career firefighter off-duty DWI. The problem is that SFCFD lacks a comprehensive DWI policy for off-duty members. The purpose of the research was to examine recent DWI incidents by off-duty firefighters in New Mexico, to expose the issues that have been raised by these occurrences, and to uncover and examine some of the important considerations for designing and implementing an off-duty DWI policy. Highlighting the critical components of an effective off-duty DWI policy and incorporating those components in a written policy will assist the department in meeting its mission to provide high quality emergency services. Descriptive research revealed the ongoing problem of alcohol abuse and drunk driving in New Mexico, the development of improved laws and enforcement strategies, and the recent occurrences and consequences of firefighter DWI. Interviews with the chief officers of seven comparable fire departments and two law enforcement agencies revealed similarities and differences between departments in dealing with off-duty firefighter DWI and inconsistencies in the wide range of strategies deployed by the representative agencies. Considerations for developing a sound, written policy were distilled from the research and presented as the basis for designing an off-duty firefighter DWI policy that will be reflective of the department's mission and culture.

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## Introduction

Driving While Intoxicated (DWI) by off-duty firefighters is a serious problem in New Mexico. In the last 18 months, several high profile cases throughout the state have impacted large and small fire departments alike, career and volunteer. The tidal wave of off-duty firefighter DWI cases in New Mexico hit the press just as the problems associated with firefighter behavior nationally were beginning to be addressed with the release of the Fire Service Reputation Management White Paper in March 2010. Several of the DWI cases were front page news, and the public quickly focused on the particular problem of off-duty firefighter drinking and driving as a symbol of a persistent and seemingly intractable public health and enforcement problem in New Mexico. The unfortunate New Mexico incidents have given rise to a review of the conduct of off-duty firefighters in many communities, and have stimulated the development of stricter fire department policies governing such behavior, in particular off-duty drinking and driving.

The problem is that the Santa Fe County Fire Department lacks a comprehensive policy to address DWI by off-duty career and volunteer firefighters. The purpose of this research is to examine recent DWI incidents by off-duty firefighters in New Mexico and detail the issues that have been raised by these occurrences, and to examine some of the important considerations that departments should address when designing and implementing an off-duty DWI policy for volunteer and career firefighters. The

descriptive research method, incorporating a review of recent events and procedures as well as interviews is the primary method used in this research paper. Some time is spent examining the background of DWI in New Mexico and the development of recent incidents to provide an appropriate context for the discussion.

The research questions are (a) How do comparable fire departments in New Mexico address off-duty firefighter DWI? (b) What are some of the considerations that should be incorporated when designing and implementing an off-duty DWI policy for career and volunteer firefighters?

#### Background and Significance

DWI has a long and complicated history in New Mexico. In 1913 the first state legislature voted to jail and fine drunk drivers, but the practice of driving drunk in New Mexico proved largely intractable. By 1982, when 375 people died in alcohol related vehicle crashes, New Mexico had the worst record of any state in the nation (Blumenthal, 2005). In the 1990's a growing public outcry prompted the legislature to examine the problem and to develop more effective laws. Lawmakers began addressing overburdened court systems, haphazard record keeping related to DWI, and a society that too often winked at abuse (Blumenthal, 2005). By 2006, success was in the making: the state recorded 179 fatalities, approximately one-half of the fatalities recorded two decades earlier. New Mexico was recognized as a model state for its comprehensive approach to the drunken driving problem (New Mexico Department of Transportation [NMDOT], 2006). Enforcement,

education, and treatment programs, in addition to laws requiring stiffer fines and penalties and mandatory ignition interlocks for all convicted offenders had been implemented. The State Regulation and Licensing Department had passed rules allowing the State to revoke the liquor licenses of establishments that serve minors and persons who are intoxicated. In addition, improvements in local and state funding mechanisms had increased the number of DWI checkpoints, saturation patrols, and drunken driving arrests (NMDOT, 2006).

New Mexico has some form of mandatory sentencing for all drunken driving offenses. It is important to note that DWI charges cannot be plea bargained to non-DWI charges, and sentences may not be suspended, deferred, or taken under advisement (NMDOT, 2006). It is appropriate to review these sanctions here as they will be relevant in our subsequent discussion about off-duty firefighter DWI.

New Mexico's laws make it illegal to operate a motor vehicle if the blood alcohol concentration (BAC) of the driver is .08 percent or above, with stricter limits for commercial drivers and those under the age of 21. While the .08 limit is the standard throughout the nation, the punishment is not the same in all states. New Mexico has enacted strict penalties so that even the first offense is costly (New Mexico Department of Public Safety, 2010). For instance, New Mexico has both pre-conviction and post-conviction licensing actions. Pre-conviction driver's license revocation penalties for the first DWI arrest are mandatory and

are applied for a minimum of six months. During this pre-conviction period, offenders are entitled to obtain an ignition interlock device and an interlock license that allows them to drive soberly, but only while using the interlock device (New Mexico State Profile, 2010). Therefore, based on the arrest notification only, a first offense driver will lose their regular driver's license and can only drive with an interlock device in place.

Post-conviction revocation penalties for the first offense have been expanded to include a suspended license for up to one year, a mandatory ignition interlock device and interlock license for one year, up to ninety days in jail, mandatory DWI school, and community service. All offenders must also receive an alcohol assessment and may be ordered to attend treatment or other rehabilitative services (New Mexico State Profile, 2010).

Penalties have also been enhanced for repeat offenders. A second or third conviction carries automatic jail time and extended license suspensions of two years or more. A fourth offense and subsequent convictions are felony offenses with lifetime license suspensions and jail time, as well as other fines and penalties. Those arrested with a BAC of .16 or above, or those who cause bodily injury while DWI, are classified as Aggravated DWI Offenders and receive additional jail time and penalties (New Mexico Department of Public Safety, 2010). Finally, refusal to submit to a BAC test is one form of aggravated DWI. Test refusal carries a mandatory administrative



license revocation penalty of one year (New Mexico State Profile, 2010).

While strides have been made in combating DWI statewide, a seemingly endless series of headline grabbing incidents in Santa Fe County has fueled the argument that not enough is being done. Since 2003 the number of DWI arrests in Santa Fe County has dropped by 355, yet approximately one-half of all fatal accidents in the County continue to be alcohol related (Auslander, 2009). And while the drop-off in arrests could mean fewer drunks on the road, the results are not clear. Especially in light of some recent high profile cases that keep the DWI issue on the public's radar in Santa Fe County and throughout New Mexico. For instance, in 2009 a drunk driver on the Old Las Vegas Highway in Santa Fe killed four teenagers only months after a drunk driver going the wrong way on Interstate 25 crashed into a minivan killing five members of a family as well as the wrong way driver, who had a BAC four times the legal limit (Auslander, 2009). Most recently, in December 2010 a drunk driver speeding over 100 miles per hour the wrong way on the Interstate slammed into an Rocky Mountain EMS Ambulance, killing the wrong way driver and critically injuring the ambulance driver, a young Santa Fe County Fire Department EMT and volunteer. And while penalties for repeat offenders have been enhanced, it's not unusual for some drunk drivers in the state to have a long history of multiple DWI offenses (Auslander, 2009).

Firefighters in New Mexico and nationally are not immune to drinking and driving. And they are not protected from the consequences of those actions. A recent Cornell University study of firefighters revealed that fire departments have almost precisely the same percentage of problem drinkers as does the general public (Oregonian, 2008). And this reality is reflected in the number of on and off-duty cases of firefighter misbehavior involving alcohol that continue to tarnish the reputation of the fire service. For instance, in 2005 a group of 28 San Francisco fire fighters sued their own department, claiming that on-duty drinking was "frequent, open, and notorious" (Van Derbeken, 2005). In 2010 it was revealed that more than 70 Cincinnati firefighters have faced criminal charges in the last five years, with drunk driving the most common offense (Prendergast, 2010). In 2010, in short order, a South Carolina firefighter was charged with operating a fire department vehicle while intoxicated (Kropf, 2010), a New York volunteer firefighter was caught responding to a fire while drunk, and a New Jersey EMS Chief was charged with Driving While Intoxicated while responding to a call in a marked command vehicle (The Secret List, 2010).

These DWI incidents from around the nation are a small sampling of a much larger set of problems plaguing the fire service. The recent proliferation of firefighter DWI and other criminal conduct has had a detrimental impact on the individuals involved, their departments, and the fire service as a whole (Cumberland Valley Volunteer Fireman's Association [CVVFA], 2010). And the negative impact of unlawful or embarrassing

conduct isn't confined to on-duty time. According to the White Paper, "even incidents that occur off-duty and outside the scope of the fire service involving members of the fire service, bring similar disrepute" (CVVFA, 2010).

This is particularly the case in New Mexico, where a rash of DWI cases during the last two years paints a disturbing portrait that appears to mirror the national picture, with most of the issues related to off-duty firefighter conduct. In March, 2009 two Farmington, New Mexico firefighters were arrested in separate DWI incidents. Both firefighters were off-duty. Fire Captain Charles Martin retained his job, his arrest coming just months before Farmington instituted a new policy of zero tolerance for DWI. Training Chief Vince Moffitt resigned from the department after his arrest (Lynn, 2010). Albuquerque Fire Department experienced an even larger scourge with eight DWI incidents in a single year. The state's largest media market was flooded with stories of off-duty firefighters drinking, driving, and generally behaving poorly. For instance, in one case a veteran Fire Captain was arrested for allegedly ignoring traffic signs while driving off-duty through a construction zone. He registered a BAC of .26 percent and was demoted by the department from captain to firefighter. Following his reinstatement, he failed an alcohol test while on duty and promptly retired (Galvan, 2010). In another case from June 2010, Albuquerque Fire Fighters Local 244 sued the city after the fire department refused to reinstate a firefighter charged with aggravated DWI to his prior rank and pay level. The union claimed that the city violated its own policy on

first time DWI offenders (Winchester, 2010). According to Public Safety Director Darren White, "these cases tarnish the badge of every firefighter who is out there doing a fantastic job and representing this city in a very honorable way." With eight firefighters arrested for DWI in little more than one year, clearly something had to change.

The Santa Fe County Fire Department (SFCFD) has not yet experienced the off-duty DWI problems faced by Albuquerque, Farmington, and other departments. Yet the recent trend clearly indicates that the department should be prepared and have an effective off-duty DWI policy in place. SFCFD was created in 1997 by the Santa Fe Board of County Commissioners (BCC). At that time the fifteen volunteer county fire districts and the Office of the County Fire Marshal were consolidated into one entity. Ordinance 1997-11 provided the organizational framework for the new department, and the BCC appointed a Fire Chief responsible for the "staffing, recruitment, training, budgeting, and all other administrative matters for the department and for the development and improvement of the department to meet local, state, and federal standards" (Santa Fe County Ordinance 1997-11, 1997).

Following consolidation, a strong effort was made to better organize the delivery of fire and EMS services in Santa Fe County. The individual county fire districts were retained, but changes were implemented to insure that the districts in each geographic region of the county cooperate and share resources. In recent years the district volunteer firefighter ranks have been

supplemented with career firefighters and emergency medical technicians in an effort by the county to provide faster and more reliable emergency response. SFCFD currently supports 63 career cross-trained Firefighter/Emergency Medical Technicians organized on three shifts. Each shift, supervised by a Battalion Chief, provides a daily staffing of 21 firefighters responding from four regional main stations and two substations. These career personnel, and a supporting administrative staff, supplement and assist 343 volunteer firefighters who operate out of 28 additional volunteer stations spread throughout the 14 fire districts (Five Year Plan 2010-2014). In 2010 the county fire department responded to 6713 emergency calls for assistance. Seventy three percent of those responses were for emergency medical services which are delivered at the paramedic level (Santa Fe County Fire Department, 2010). In addition, policies, procedures, and District By-Laws have been formulated and implemented by the department to build consistency in fire suppression activities, training, and the provision of emergency medical services (Five Year Plan 2010-2014).

All of this was done with good reason. Santa Fe County, in North Central New Mexico, is large and diverse, consisting of 1,910 square miles, 68 defined communities including four Native American Pueblos, 8 historic towns, and 143,501 residents. The City of Santa Fe in the north central portion of the county is the New Mexico State Capital and a historic, eclectic city that is perennially ranked as one of the nation's top tourist destinations. The city is protected by the City of Santa Fe Fire

Department. The unincorporated areas immediately surrounding the city and protected by the SFCFD are primarily urban or suburban. Other more remote unincorporated areas consist of ranchland, widely separated rural villages, housing tracts, and large parcels of federally controlled properties. Approximately 25% of the land in the county is owned by the Bureau of Land Management and the United States Forest Service and 60% is privately owned (United States Census, 2009). The county supports only one hospital; consequently, travel time and distance for EMS response and transport are often extended. The median income for Santa Fe County households in 2009 was estimated at \$52,923, and the median income for families was estimated at \$64, 499. The percentage of families with income below the poverty line was 8.7% in 2009, substantially lower than the 13.7% of New Mexico families below the poverty threshold for the same year (United States Census, 2009).

Investigating how fire departments in New Mexico address off-duty firefighter DWI and highlighting the critical components of an effective off-duty DWI policy for career and volunteer firefighters will assist the department in meeting its mission to "provide high quality emergency services to the people of Santa Fe County" (Five Year Plan 2010-2014). Understanding why an off-duty DWI policy is necessary, especially in light of recent problems both statewide and nationally in the fire service, relates to and supports the United States Fire Administration operational objective to "appropriately respond in a timely manner to emergent issues" (United States Fire Administration,

2007). The completion of this project and the subsequent implementation of the recommendations are consistent with the goal of the National Fire Academy Executive Leadership course to "develop the ability to conceptualize and employ the key processes used by effective executive-level managers (Executive Leadership Student Manual, 2005). The necessity to provide an effective off-duty firefighter DWI policy for firefighters and department administrators requires the leadership, skills and knowledge gleaned from the Executive Leadership class.

#### Literature Review

A literature review was completed using the National Fire Academy Library and the Internet, and this review was supplemented with personal observations, discussions and interviews. This section will review the body of knowledge uncovered regarding alcohol, DWI policies and the efforts of several public safety organizations in New Mexico to address, through a variety of means including policy development, the seemingly intractable problem of off-duty firefighter DWI.

Alcohol consumption and DWI have a long history in New Mexico and Santa Fe County. In recent years, in addition to promulgating harsher penalties, the state and county have focused on the detection, identification, and assessment of those who drive drunk as an essential means to keeping roads safe (New Mexico State Profile, 2010). However, it is clear that detection, identification, and assessment are not universally effective.

Contrary to a common misperception, not everyone arrested for DWI is an alcoholic, and alcoholics are not at the highest risk of injury related to alcohol consumption.

The term alcoholism refers to a primary, chronic disease characterized by the preoccupation with the drug alcohol, impaired control over drinking, and the use of alcohol despite adverse consequences. Alcoholism is the most severe stage of a set of drinking problems which begin with binge drinking and alcohol abuse (Buddy, 2010). It is important to note that many drunk drivers are not classified as alcoholics or even problem drinkers, and while alcoholism is the most severe stage of the disease and commonly associated with DWI, less severe drinking stages such as binge drinking can be dangerous (Gmel, Bissery, Gammeter, Givel, Calmes, Yersin, 2005). In fact, binge drinkers - those who consume five or more drinks in one session for men and four or more for women - have the highest risk of injury. It is this class of moderate drinkers who are more likely to suffer injuries while drinking. Therefore, while all groups of drinkers are at increased risk of alcohol related injuries, those who usually drink less often but on occasion heavily are at particular risk (Gmel et al., 2005).

Drinkers are classified as alcohol abusers when drinking begins to cause problems but the behavior continues anyway. Alcohol abuse can become a dependence problem when the craving for alcohol and loss of control continue despite repeated problems related to the consumption of the drug (Buddy, 2010). In



a 2002 study of the drinking histories of fatally injured drivers, the authors determined that only 31% of those killed in automobile crashes had high levels of alcohol (a BAC greater than .15 percent) in their blood (Baker, Baker, Chen, Li, Williams, 2002). These authors concluded that in addition to programs to detect, identify and assess problem drinkers or repeat offenders, enhanced enforcement efforts such as sobriety checkpoints that target a broader spectrum of drinking drivers are necessary. Their findings also contradict the blanket practice of allowing those arrested for DWI to attend treatment programs or support meetings in lieu of jail time since most offenders are not problem drinkers in the first place (Baker et al., 2002).

In addition to legislative and law enforcement actions to combat DWI, government employers have been addressing the problems associated with alcohol and substance abuse for many years. Employers frequently utilize a set of prevailing and best practices to identify, confront, and treat alcohol and drug abusing employees. It is commonly recognized that with an appropriate mix of strategies employers can play a meaningful role (Zeidner, 2010). One approach, workplace drug testing, is not the political hot potato it was in the late 1980s, and even though there is no federal mandate that requires testing for most firefighters, most safety-sensitive employees are nevertheless subject to pre-hire and random drug and/or alcohol tests. However, evidence supporting the effectiveness of testing in preventing use among employees is scant. According to federal

researchers, "To date, there is limited evidence about the effectiveness of this deterrent effect" (Zeidner, 2010).

Another common strategy utilized by employers is employee assistance programs (EAPs). EAPs have been utilized by employers for 25 years as a first line of defense for alcohol and substance abuse problems, and to improve productivity and the health of employees (Grossman, 2010). Almost all fire departments maintain an Employee Assistance Program. In a work on alcoholism and firefighters, a survey by the author of 65 fire service representatives revealed that 100 percent reported having an EAP in their department (Piland, 2006). Employees can access EAPs under their own initiative, in response to a supervisor's suggestion, as a condition of employment, or to return to work following a positive test. However, EAPs do a poor job identifying alcohol and/or drug problems and statistics reveal that the programs are not frequently accessed by those employees with alcohol or drug problems. A federal study from 2008 revealed that within the group of employees who received treatment for substance abuse, 52.7 percent were referred by courts, 26.2 percent accessed services through other avenues, and only 2.2 percent entered treatment through EAPs (Grossman, 2010).

According to the National Institute on Alcohol Abuse and Alcoholism, 14 million Americans meet standard criteria for alcohol abuse and alcoholism (Buddy, 2010). While no comparable data was found on alcohol consumption by firefighters, a National Volunteer Fire Council (NVFC) survey found that 8 percent of

firefighters reported driving under the influence of alcohol (United States Fire Administration, 2008). Furthermore, in a 2005 survey of 1200 firefighters conducted by the International Association of Fire chiefs (IAFC), 18 percent of the respondents reported that members of their own department had arrived at a fire station or to a fire call alcohol impaired. More than one third reported that members of their department had missed duty due to alcohol consumption and fully 66 percent responded that department members had reported for duty hung over from excessive alcohol consumption. In addition, 29 percent reported incidents of public misconduct such as DWI by members of their department. Finally, when participants were asked about alcohol abuse on or off duty, 75 percent stated that there was some degree of abuse ranging from minor to serious by their department firefighters (Kirk, 2005).

The fire service traditionally has maintained a passive attitude toward alcohol consumption by firefighters. In many cases, drinking accompanies departmental activities and functions (CVVFA, 2010). And while it is commonly recognized that alcohol use is inappropriate by a firefighter on duty or in a position to respond to an emergency, not all departments have strict policies regarding alcohol use, particularly in the volunteer sector (West, 2003). The IAFC and other organizations such as the NVFC encourage departments to develop and implement written policies and procedures on alcohol that clearly specify the relationship between alcohol use and department response activities. The IAFC has also published a zero-tolerance alcohol policy that calls on

members to voluntarily remove themselves from all activities if they have consumed alcohol within the previous eight hours (West, 2003). However, according to some experts, "Alcohol policies that feature self regulation are essentially worthless. A person who has been drinking lacks the ability to judge the degree of his or her impairment and cannot be trusted to make a safe decision" (CVVFA, 2010).

Most fire departments operate under regulations regarding employee health and safety, even if they don't have their own specific policies on alcohol use. The State of New Mexico, under an agreement with the Occupational Safety and Health Administration (OSHA) operates a health and safety program in accordance with Section 18 of the Occupational Safety and Health Act of 1970. The New Mexico Occupational Health and Safety Bureau (OHSB) maintains jurisdiction for all public sector employees, including firefighters (Occupational Safety and Health Administration [OSHA], 2008). OSHA requires employers to maintain a workplace that is free from recognized hazards. And while the New Mexico OHSB provisions don't specifically address firefighter drug and alcohol use, they do require that the employer assure their firefighters are physically and emotionally capable of performing their duties. Firefighters may also be removed from firefighting activities if warranted by a physical or emotional condition which could affect their safe performance (OSHA, 2008).

National Fire Protection Association (NFPA) Standard 1500, Fire Department Occupational Safety and Health, Section 8-1.5,

states that members under the influence of alcohol shall not participate in operational activities. The Standard also prohibits a member from operating equipment or driving a vehicle while on duty, including a private vehicle, while under the influence of alcohol. Furthermore, Section 9-9.2 requires that fire departments adopt a written policy statement on alcoholism that includes clear program objectives, a description of how the program will be implemented, and the penalties associated with a failure to comply (National Fire Protection Association, 2007).

The Fire departments and public safety agencies researched for this project all maintain some form of on-duty written alcohol use policy. This includes volunteer and career organizations. The policy statements range from short and simple, such as the one sentence prohibition against operating a motor vehicle while under the influence of alcohol from the Forest Service Health and Safety Handbook (United States Forest Service, 1999), to much more detailed programs. For instance, the Phoenix Fire Department supports an Education, Awareness, Treatment and Prevention Program. This comprehensive approach applies to all members of the department and all applicants and requires routine testing for alcohol and drugs. The policy covers education and awareness training for employees, testing procedures and parameters, prohibited conduct, the consequences of prohibited conduct, and remediation (Phoenix Fire Department, 2010). The policy specifically covers on-duty alcohol consumption and intoxication, and reporting to a duty station while under the

influence. It fails to address off-duty consumption and illegal conduct, including DWI.

In a similar fashion, the Marin County Fire Department Alcohol and Drug Abuse Policy addresses on-duty consumption, driving department vehicles while under the influence, the possession of alcohol or illegal drugs while on duty, and reporting to work under the influence. It does not address off-duty consumption or behavior, except in regards to how consumption may impact a firefighter's ability to report to work (Marin County Fire Department, 2001). The Village of Lake George, New York does include a requirement that a member of the Lake George Volunteer Fire Department, if convicted of any violation of the New York State Vehicle and Traffic Law within the past 10 years, be prohibited from operating fire apparatus (Village of Lake George, 2010). And the Coldsprings-Excelsior, Michigan Volunteer Fire and Rescue Alcohol Policy include the following statement: "It is the goal of this policy that no employee ever cause harm to the professional image of the fire department." It goes further by including a provision that any member convicted of DWI at any time in any vehicle shall have their driving privileges reviewed by the Fire Chief (Coldsprings-Excelsior, 2010).

The Santa Fe Fire Department has an alcohol policy that addresses on-duty consumption and prohibits the consumption of alcohol within four hours of an employee's scheduled time to report to work (Santa Fe Fire Department, 2003). The policy does

not specifically address off-duty DWI. Sandoval County Fire Department, New Mexico is a combination career and volunteer Fire Department. It's Personnel Rules and Regulations handbook for career firefighters maintains a testing program and a prohibition against conducting county business, including driving vehicles or operating county equipment, while under the influence of alcohol (Sandoval County Personnel Rules and Regulations, 2010). The volunteer fire district bylaws address on duty intoxication for volunteers, as well as impairment while wearing a department uniform. Both are infractions requiring disciplinary action. Members convicted of a DWI are terminated from membership (Sandoval County Fire Department, 2009).

Santa Fe County is committed to a drug and alcohol free workplace and provides alcohol and drug testing in compliance with the Code of Federal Regulations (CFR) Title 49, part 40. The program applies to all commercial vehicle operators and those employees who work in safety sensitive positions, including career firefighters (Santa Fe County Fire Department [SFCFD], 2006). The policy does not apply to volunteers, who are not considered employees by the County. According to the policy, Santa Fe County career firefighters are prohibited from consuming or possessing alcoholic beverages while on duty or in a county uniform or on county property. Each covered employee is also prohibited from reporting to duty with a .02 percent BAC or greater. The first instance of a verified positive test from a random sample, a reasonable suspicion incident, or a post

accident test will result in termination from employment (SFCFD, 2002). The policy does not address off-duty DWI.

The SFCFD Fire District Bylaws, which apply to volunteers, state that performing any membership function while under the influence of alcohol shall be cause for disciplinary action, to include possible termination. Off-duty conduct is not specifically addressed; however, "conduct unbecoming an officer or member of the Department," is also grounds for discipline (SFCFD, 2002). Interestingly, the Bylaws also state that, "in general, the private life of a member of the department is considered personal and outside the jurisdiction and authority of the county".

#### Procedures

A selective review of research materials and historical background information was useful in providing background information on alcohol and the types of alcohol abuse. Materials obtained from the search, including recent off-duty DWI incidents in New Mexico, provided a valuable review of the current issues regarding off-duty firefighter DWI and illustrated the common difficulties faced by fire departments in dealing with a relatively frequent problem that has serious ramifications. The search also provided useful insight into how fire departments deal with alcohol issues, and helped form the basis for understanding some of the critical considerations when designing and implementing an off-duty DWI problem for career and volunteer firefighters.



Research into how fire departments in New Mexico address off-duty firefighter DWI, and what to consider when designing a policy, was conducted primarily through interviews. Information was collected during a total of nine separate interviews of high ranking fire department and law enforcement personnel, as well as personal communications with the Santa Fe County Attorney. Seven of the individuals chosen represent a comparable cross-section of the fire service in New Mexico. Two interviews were conducted with local law enforcement agencies, it being recognized that law enforcement agencies have demonstrated a straight forward approach to employee DWI. This contrast with the fire service provided a perspective on how other public safety agencies in New Mexico have handled the issue and served to broaden and strengthen the final recommendations. A final discussion was conducted with the Santa Fe County Attorney to understand the legal considerations of dealing with an off-duty firefighter DWI through policy development and implementation. The county attorney was specifically asked to explain the pertinent legal issues that may arise from a policy that addresses off-duty conduct, including termination prior to a conviction for DWI. These insights also strengthened the final recommendations.

During the first two weeks of February 2011, the nine public safety representatives were asked four interview questions: (1) Do you have an on-duty alcohol use policy for employees? (2) Do you have a written policy that specifically covers off-duty DWI by your employees, and if so what are the basic provisions? (3) If no policy exists how does your agency handle an off-duty DWI?

(4) Based on your experience, what do you think should be included in an off-duty DWI policy?

Three fire chiefs representing departments that staff both career and volunteer (combination) firefighters were interviewed, including Santa Fe County Fire Chief Stan Holden, San Juan County Fire Chief Doug Hatfield, and Sandoval County Deputy Fire Chief James Maxon. All three agencies provide fire protection and EMS service in large, suburban and semi-rural areas of New Mexico using primarily volunteers. Four fire chiefs from career fire departments were interviewed, including City of Santa Fe Fire Chief Barbara Salas, Los Alamos County Fire Chief Doug Tucker, Las Cruces Fire Chief Travis Brown, and Albuquerque Assistant Chief (retired) Craig Sadbury. These departments provide fire and EMS services in mostly urban areas using paid, career firefighters. Albuquerque Fire Department is the state's largest municipal fire department, and has experienced most of the recent off-duty DWI issues. Two individuals representing law enforcement agencies were interviewed: Santa Fe County Sheriff Major Robert Riggs, and New Mexico Department of Public Safety (State Police) Chief Legal Counsel John Wheeler. In addition, Santa Fe County Attorney Steven Ross was questioned for his unique legal and non-public safety perspective on the issues.

The fire departments chosen for this research are the larger New Mexico departments that cover areas with sizeable populations and active local media coverage. The small, all volunteer fire departments that are so common throughout the state were not

regarded as comparable to SFCFD in call volume, number of members, or professional services provided and were therefore not selected. This necessarily limited the scope of the project. An additional focus was directed to departments with experienced and tenured chief or executive officers in order to capture broader personal and professional insights.

Personal interviews were utilized as the primary means of research. Interviews were selected in order to insure that the most knowledgeable department officer, in most cases the fire chief, not only answered the questions but also provided insights and discussion on what is a sensitive topic in the local fire service. But interviews, while they can be more comprehensive, are time consuming and, by necessity, generally more limited in scope than surveys or other research methods. It can also be more difficult to extrapolate the results. Finally, the sheer bulk of information available regarding alcohol and alcohol related problems such as DWI, and the steps taken to combat these problems in New Mexico and Santa Fe County, are truly enormous. Conversely, the research on firefighters and alcohol use and abuse is surprisingly limited, as are national and local statistics on off-duty firefighter DWI.

### Results

Research Question (a): How do comparable fire departments in New Mexico address off-duty firefighter DWI? The research utilized two questions to guide the study. Question (a) assessed how a sampling of comparable fire departments in New Mexico deal

with the problem associated with off-duty firefighter DWI, a problem that has been especially prevalent during the past 18 months. Nine representatives were interviewed, including 2 law enforcement officers and seven fire department officers. Four interview questions were asked of each participant. Interview questions 1 through 3 directly relate to research question (a). A summary of the results of these interview questions is provided in Appendix A, Figures 1 and 2.

All nine respondents indicated they have on-duty alcohol and DWI policies that prohibit alcohol consumption during work hours or while operating a department vehicle. These prohibitions include arriving at the work site while under the influence. All of the representatives acknowledged that it is important to have a written on-duty policy; however, not all departments have established a written off-duty policy.

Both law enforcement agencies have off-duty DWI policies. Three of the seven fire departments interviewed have established written off-duty policies. There were several similarities between the three fire department written policies. These included providing proactive written direction to employees, as well as requiring employee training sessions on DWI and the consequences of a failure to adhere to the policy. It was noted by Chief Sadberry from Albuquerque that, as with any established policy, management discretion in addressing individual events is reduced. Although Chief Sadberry supports written DWI policies, he expressed a reservation about the loss of management

discretion implicit in such a document. According to Sadberry, "by removing judgment and discretion you've removed a chance for mercy" (personal communication, February 8, 2011). Interestingly, none of the department representatives interviewed specifically referred to their department's Employee Assistance Program in regards to off-duty DWI.

As would be expected, there were notable differences between written fire department policies as well. For instance, only Albuquerque required an investigation. Albuquerque will relocate an employee who has been arrested to another city department where driving is not a requirement pending completion of an investigation. Albuquerque and Los Alamos (as well as the NM State Police) will terminate an employee prior to court proceedings, but the policies do not specify a time frame from arrest to termination. Los Alamos County Fire Department is stricter than the others; it requires that each firefighter maintain a security clearance due to the responsibility of the department to respond to Los Alamos National Laboratories. Off-duty DWI results in an automatic loss of security clearance and termination of employment. Las Cruces caps the time frame at 90 days and will relocate an employee to another job classification, if available, within the city. This move may be permanent.

The remaining 4 fire departments (57%) do not have a written policy. There were similarities between the approaches taken by these departments. For instance, the Chiefs from Sandoval County, City of Santa Fe, San Juan County, and Santa Fe County all

discussed the need for employees to maintain a driver's license, and all relied on the license requirement, which is contained in department job descriptions, when dealing with off-duty DWI.

Three of the four representatives stated they take into account the circumstances of the event as well as the employee personnel record in making a determination on how to proceed. This, of course, takes additional time. Yet only San Juan and the City of Santa Fe were concrete on how they deal with an employee who has lost their driver's license. In San Juan a volunteer firefighter will be suspended pending their court case. A volunteer may also be prohibited from driving for any length of time. A career firefighter is required to use accrued personal leave. A career firefighter in the City of Santa Fe will be placed on restricted duty.

There were also differences in approach. The City of Santa Fe does not conduct an investigation and a firefighter can be terminated prior to conviction. The other three departments will conduct an investigation. According to John Wheeler from the Department of Public Safety, "A really robust investigation is a critical component" (personal communication, February 2, 2011). However, the three fire departments that require an investigation, but do not have a policy in place to guide them, reported that they are more reluctant to terminate an employee short of a court conviction than those departments with a written policy.

Research Question (b): What are some of the considerations that should be incorporated when designing and implementing an off-duty DWI policy for career and volunteer firefighters? This question sought to determine, through interviews with the nine Chief Officers as well as the Santa Fe County Attorney, what factors should be considered in the design and implementation. Interview Question 4 directly related to this research question. A summary of the results of Interview Question 4 are provided in Appendix B, Figure 1.

All of the respondents (100%) favored a written off-duty policy and all offered suggestions for designing a sound policy. None of the four fire chiefs without a written off-duty policy indicated that this situation was beneficial to their organization. And, of course, none endorsed off-duty firefighter drinking and driving. Considerations for the design of a policy included establishing a requirement for firefighters to obtain and retain a driver's license. This requirement should be written into all job descriptions and the department rules and regulations, or the bylaws for volunteers. The loss of licensure should result in suspension, reassignment, or leave for the employee. The policy should include a requirement for notification of an arrest, although the time frames varied from immediate to within 24 hours. Additional considerations included creating a policy that is clear, unambiguous, universally endorsed by staff, and with clearly delineated consequences. Training on the policy for all firefighters was regarded as critical, including during new employee or new member

orientation. Three of the representatives also stated that some focus should be directed to the loss of personal integrity and credibility following an off-duty DWI arrest, as well as the professional consequences such as the loss of job, position, or status.

There was a variety of opinion on two major considerations. For instance, not all of the departments discussed the need to conduct an investigation. John Wheeler and Chief Sadberry both stressed the importance of conducting a professional investigation to insure that a preponderance of evidence existed prior to considering termination. A robust investigation was also strongly supported by the Santa Fe County Attorney, Stephen Ross. Furthermore, both Ross and Wheeler stressed the need to insure that an employee receive a Loudermill hearing as required by law prior to termination, although Ross stated that this may not apply to volunteers who are technically not employees (personal communication, February 1, 2011). According to Ross, the employer's obligation to provide a Loudermill hearing arises from the recognition that a career firefighter has a property interest. Only four of the departments stated they would consider termination prior to conviction. However, all of the respondents did express how difficult it can be to place a firefighter in a restricted position, or to remove a firefighter from the roster for an indefinite period of time, due to a DWI. In this regard, John Wheeler stressed the importance of not creating a special exception as this tends to make the retained employee 'bulletproof' or immune from further disciplinary action



(personal communication, February 2, 2011). However, Stephen Ross stated that government entities need to be patient and resist public pressure to move more quickly until the legal system runs its course, even though this may take weeks or even months to complete (personal communication, February 1, 2011).

#### Discussion

New Mexico has a significant problem with alcohol. The state, beginning in the 1990s, has made strides in addressing the problem through a series of innovative approaches. State and local governments, legislators, and members of a concerned public have successfully reformed statutes, enhanced enforcement of the law, imposed significant penalties for infractions, educated drivers, and worked through a number of programs to curtail recidivism (NMDOT, 2006). Yet, however good the intentions and impressive the results, drinking and driving continue to be a detriment to a safe society. In Santa Fe County in 2006 alcohol was involved in 45% of all fatal crashes. Fourteen people were killed in these crashes and 209 injured. The severe alcohol related crash rate in the county was 1.4 per 1,000 licensed drivers, significantly higher than the overall rate of 1.1 in New Mexico (NMDOT, 2006).

While hard numbers do not exist, it appears that firefighters suffer from alcohol abuse, and participate in disturbing alcohol-fueled behavior, at approximately the same rate as the general public (Oregonian, 2008). This reality runs contrary to the fact that fire departments are held in high

esteem by the public, and firefighters are perceived to have a greater responsibility to be model citizens. It only takes a few well publicized misdeeds by firefighters who disregard the fire service mission to damage the reputation of their department as well as the fire service in general (CVVFA, 2010). This has been particularly evident in New Mexico where a number of off-duty firefighter DWI incidents have been well publicized and much discussed by the public. The 8 incidents involving Albuquerque firefighters forced the city to re-write their off-duty DWI policy to align it with current public expectations (Sadberry, personal communication, February 8, 2011).

In light of this reality, it is troubling that a number of fire departments, including SFCFD, do not have a written off-duty DWI policy in place. An alcohol policy is required by NFPA and OSHA standards, and nearly every reputable fire service organization has weighed in favorably. For instance, the IAFC adopted a Zero Tolerance for Alcohol and Drinking Policy Statement in 2003. According to IAFC past President John Buckman, its one policy that professional fire departments must have in place (West, 2003).

While on-duty alcohol use policies are ubiquitous, fire departments in New Mexico and elsewhere do not consistently address off-duty use and DWI through written policies. Fire departments have in general maintained a passive attitude toward the problem (CVVFA, 2010). As stated in the SFCFD Fire District Bylaws, the personal life of a firefighter is generally

considered outside of the jurisdiction of the county. There is also some hesitancy to implement a written off-duty conduct policy that may reduce the fire chief's discretion to consider individual circumstances, to review past performance and evaluations, to take personal testimony, and to intervene on behalf of a valued firefighter (Sadberry, personal communication February 8, 2011).

Designing and implementing a written off-duty policy that is endorsed by staff raises a number of difficult questions to answer. For instance, how should the department deal with a firefighter who has been arrested for DWI and has lost their license to drive or has been assigned an interlock device? In this case, the department must consider if it can afford to place the firefighter on restricted duty for weeks or even months prior to a court date. In 2006, the average length of time from the date of citation to the date of court disposition in Santa Fe County was 109 days, or 3.5 months (NMDOT, 2006). This represents a considerable hardship and cost for a public safety agency where each seat must be filled on a daily basis in order to maintain service (Major Riggs, personal communication, February 8, 2011).

If the department decides to require termination prior to conviction for an off-duty DWI, the employer is placed in a precarious position unless (and there is no guarantee) a thorough investigation is conducted and enough facts are gathered to establish a preponderance of the evidence, which is necessary to substantiate termination. This investigation takes time and staff

resources and does not eliminate the need to remove the firefighter from regular duty for an interim period of time; nevertheless, by terminating without a conviction the employer runs the risk of violating the rights of the terminated firefighter and may be on the hook for legal fees, a return to work status, and a monetary settlement (Stephen Ross, personal communication, February 1, 2011). Chief Legal Counsel John Wheeler, who was adamant about the need to conduct a competent investigation, even suggested that the moment arrest notification is provided to the department, the assigned investigator should respond to the jail and observe and document the evidence first hand. However, the research revealed that not all of the fire departments conducted an adequate investigation prior to termination. In addition, fire departments must consider the cost of losing a trained employee. Assistant Chief Sadberry estimated the cost of conducting a fire academy at five thousand dollars per firefighter, not including employee salaries (Personal communication, February 8, 2011).

Not everyone arrested for a DWI is an alcoholic and alcoholics are not at the highest risk for injury. As the research demonstrated, binge drinkers are at the highest risk (Gmel et al., 2005). Therefore, to be most effective, strategies to curtail drunk driving must be designed to address the broadest possible spectrum of potential drinkers. In the enforcement arena, this strategy might include sobriety checkpoints or DWI hotlines. The fire service has traditionally utilized several strategies as well, including pre-employment and post accident

testing, random testing, and employee assistance programs. The research indicates that the deterrent impact of testing is debatable (Zeidner, 2010). Employee Assistance Programs also generally do a poor job of identifying employees with alcohol problems (Grossman, 2010). In addition, the common approach of curtailing drinking and driving through pleas for self regulation has been found to be ineffective (CVVFA, 2010).

There was even debate regarding the effectiveness of imposing harsher penalties for off-duty conduct. Chief Tucker of Los Alamos Fire Department insisted that the department's strict policy on off-duty drinking and driving, which accounts for approximately 2 firefighter terminations each year, is not much of a deterrent. According to the Chief, the fire service maintains a tradition of work hard and play hard that can do a lot of harm. Firefighters don't think a DWI will happen to them. It is only after an arrest that they really worry about the consequences (Tucker, personal communication, February 2, 2011). Striking a similar chord, Chief Sadberry of Albuquerque believed that the city's termination policy hasn't cut down on drinking, only drinking and driving. It hasn't done anything to address the underlying problems of substance abuse, stress, and burnout which contribute to alcohol abuse in the first place (Sadberry, personal communication, February 8, 2011).

The need to establish an effective off-duty DWI policy is clear. What is evident from the research is that a single approach does not suit every department or adequately cover every

situation. Addressing the evolving problems of alcohol abuse and off-duty DWI by firefighters is a work in progress. Fire departments must focus on impacting all firefighters, in particular those who may not be alcoholics or even abusers but are at risk and do not believe that drinking and driving will happen to them. These firefighters may never get caught by the employer through on-duty testing programs, and they may not see a need to access programs like EAP for help, but the fact remains that firefighters in New Mexico are getting arrested for drinking and driving, and their actions while off-duty reflect poorly on the hard-won reputation of their department and the fire service.

#### Recommendations

Regardless of the difficulties involved, fire departments should carefully consider the approach they wish to take with off-duty DWI and incorporate that approach into a written policy that is implemented with care. The design of a written policy for off-duty firefighter DWI should be considered as proactive. As is evident from recent history in New Mexico, if a fire department hasn't had its first firefighter DWI incident, with the negative media and public scrutiny that follow, then it is surely just a matter of time. And the last thing any fire chief wants to encounter is an off-duty firefighter DWI case where the difficult questions that arise have not been addressed in a clear and consistent written policy that has been previously validated and endorsed. Written direction and authority are critically important, regardless of whether the policy requires termination

or gives the chief the explicit authority to consider mitigating circumstances or an employee's record before taking action. The key is to be prepared and to insure the policy is tailored to the department's needs.

The proactive phase is also an opportunity to change the department's culture through leadership. Designing an effective policy and planning for implementation will create opportunities to recommit the fire department to its essential public service mission and to reconnect to the value and welfare of each firefighter. All department members, career and volunteer, must be educated on alcohol use, abuse, and the realities of drinking and driving. An off-duty policy must have the confidence of all staff members. The shortfalls of an on-duty testing program, EAP, and other standard methods to prevent DWI should be openly discussed. Thorough training must be provided regarding the department's written off-duty DWI policy. This training must be innovative and touch all members, especially those who don't think that alcohol consumption can be a problem, or that a DWI can happen to them.

It was evident from the research that fire departments utilized a number of different methods to address off-duty firefighter DWI for both career and volunteer members. Those similarities and differences are not at issue, as ideally the policy provisions should be reflective of the department's mission, and the culture of the organization and the behavior of its employees must align with the mission, even during off-duty

hours. An analysis of these similarities and differences reveals that work remains to be done to create an educated fire service workforce that is aware of the consequences of off-duty drinking and driving and fully accepts the role of modeling good behavior and citizenship. A written policy should include, in unambiguous terms, the pre-determined consequences of a DWI arrest and the rationale behind those consequences. Furthermore, the research indicates that several standard policy provisions should be considered by fire departments when designing a policy. Each firefighter, regardless of classification, should be required to maintain a driver's license. That requirement should be specified in the job description of each classification and in the rules and regulations or district bylaws. An employee must notify the department within a specified time period following an arrest, and a quick investigation should be initiated by a competent investigator. This may require having an investigator pre-assigned. Loss of licensure as a result of an off-duty DWI must be grounds for departmental action. Questions regarding how and where to reassign a firefighter to restricted duty should be answered. The policy provisions should be fully reviewed by the jurisdiction's legal staff; they must be comfortable with the department's approach, as ultimately they may have to defend the policy and the actions taken by the department in court. Addressing these issues in a proactive manner will make a difference in the professional disposition of an off-duty DWI incident.



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## Appendix A

Figure 1

Agency	On-duty DWI Policy	Written Off-duty DWI Policy	Basic Written Provisions of Off-duty Policy
Santa Fe County Sheriff	Yes	Yes	Investigation required. Immediate arrest notification required. Guilty plea, no contest, or conviction shall result in termination recommendation through established county disciplinary process.
NM State Police	Yes	Yes	Thorough investigation required. Immediate arrest notification required. Termination possible prior to court proceedings or conviction.
Sandoval County FD	yes	No	n/a
City of Santa Fe FD	yes	No	n/a
Los Alamos County FD	yes	Yes	Arrest notification required. Automatic loss of United States Department of Energy security clearance. Termination prior to court proceedings or conviction.
Albuquerque FD	yes	Yes	Arrest notification required. Internal investigation required. Employee removed from field and reassigned. Possible termination prior to court proceedings or conviction.

San Juan County FD	yes	No	n/a
Las Cruces FD	yes	Yes	Arrest notification required. Reassignment possible. Loss of driver's license for more than 90 days may lead to loss of fire department position or termination.
Santa Fe County FD	yes	No	n/a

## Appendix A

Figure 2

Agency	Written Off-duty DWI Policy	How does your agency handle an Off-duty DWI?
Sandoval County FD	no	Volunteer firefighters convicted of a DWI will be terminated from membership. Career firefighters may be disciplined up to and including termination. Final action dependent on circumstances.
City of Santa Fe FD	no	Employee placed on restricted duty. If driver's license is revoked the employee is terminated prior to court conviction. Loss of license is the determining factor. No internal investigation conducted.
San Juan County FD	no	Volunteer suspended immediately and required to turn in all gear until completion of court proceedings. Termination possible. Career firefighter placed on leave pending outcome of trial. Termination possible. Final action dependent on circumstances and employee record.
Santa Fe County FD	no	Volunteer firefighter suspended and prohibited from driving apparatus for three years. Termination possible. Final action dependent on circumstances and employee record. Career firefighter may be disciplined up to and including termination. Termination prior to court conviction unlikely. .

## Appendix B

Figure 1

Agency	What should be included in an Off-duty DWI Policy?
Santa Fe County Sheriff	Employee training. Focus on loss of integrity for law enforcement personnel. Investigation necessary.
NM State Police	Must be reasonable, easily understood, universally endorsed by staff. Staff must be trained. Robust investigation and Loudermill hearing necessary. Immediate notification of arrest. Avoid creating exceptions to established policy. Avoid use of extended administrative leave.
Sandoval County FD	Requirement to maintain driver's license. Consider DWI as conduct unbecoming of a firefighter.
City of Santa Fe FD	No investigation necessary. Place employee on restricted duty. Individual employee job descriptions must include requirement to maintain driver's license. Terminate prior to court conviction.
Los Alamos County FD	Twenty-four hour notification of arrest. DOT security clearance requirement contained in job description. DWI consequences clearly delineated. Regular employee training.
Albuquerque FD	Ongoing employee training. Policy clear and unambiguous. Consequences clearly stated. Internal investigation necessary. Ability to immediately reassign employee pending outcome.
San Juan County FD	Employee background checks prior to hire. Treat volunteers and career firefighters the same if possible.
Las Cruces FD	Requirement to maintain driver's license specified in department rules and regulations. Immediate notification of loss of license. Consequences of loss clearly delineated. Training important.



Santa Fe County FD	Requirement to maintain driver's license specified in department rules and regulations, job descriptions, district bylaws. Consider DWI as conduct unbecoming for both career and volunteer firefighters. Clear consequences delineated. Focus on mission of department in determining final action.
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